



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

B7

Public Copy

File: [REDACTED] Office: Nebraska Service Center

Date: DEC 8 2000

IN RE: Petitioner: [REDACTED]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER:

[REDACTED]

Identifying and related to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. A subsequent appeal was rejected by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on motion. The motion dated May 12, 1999, will be granted and the previous decision of the Associate Commissioner will be affirmed.

On April 13, 1999, the Associate Commissioner, through the Director, Administrative Appeals Office ("AAO"), rejected the appeal pursuant to 8 C.F.R. 103.3(a)(2)(v)(A)(1) as improperly filed. The Director found that the Form I-290B, Notice of Appeal, had been filed by counsel, but that no Form G-28, Notice of Entry or Appearance as Attorney or Representative, had been submitted authorizing counsel to represent the petitioner and that counsel therefore had no standing in the proceeding. The Director also noted that the appeal was untimely filed.

On motion, counsel argued (1) that the Notice of Appeal was mailed with an accompanying Form G-28 and (2) that a Form G-28 was "executed at the commencement of the proceeding." Counsel also stated that the appellate decision, in identifying the petitioner as self-represented, "goes to the negligence of the review process, when for over two years every piece of correspondence has emanated from this office." Counsel further argued that the appeal was mailed in good faith of the allowance for an additional three days mailing time, within "tolerance of the mailing rule," and suggested that the Service should amend this rule if that allowance no longer reflects actual postal delivery times.

On motion, counsel submitted a copy of a Form G-28 executed by the petitioner and dated November 4, 1997. This date corresponds to the date the petition was filed and the visa proceeding commenced. However, a careful review of the record reveals no evidence that this Form G-28 was submitted at the time of filing of the petition or at the time of filing of the appeal. As counsel herself noted, the Form I-290B was annotated with the handwritten statement "G-28 on file," which would appear to contradict the claim that a G-28 was submitted with the appeal.

The additional claim that the appellate decision was in some manner "negligent" because the visa petition was pursued through counsel's office using that mailing address is without merit. As noted in the decision of April 13, 1999, 8 C.F.R. 103.3(a)(2)(v)(A)(2) explicitly states that an appeal filed by an attorney "without a properly executed... (Form G-28) entitling that person to file the appeal" is considered improperly filed. The regulations provide for no relief from this documentary requirement through the substitution of alternate actions. The fact that the Form G-28 submitted on motion is dated November 4, 1997, tends to indicate that it was executed at the commencement of this proceeding as stated by counsel. However, there is no evidence that the record

of proceeding contained this Form G-28, thereby authorizing counsel to file the appeal, at the time the appellate decision was issued.

Accordingly, it must be concluded that counsel has failed to overcome the Associate Commissioner's decision of April 13, 1999. The petitioner is free to file a new petition without prejudice.

ORDER: The Associate Commissioner's decision of April 13, 1999, is affirmed. The appeal is rejected.